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ABDUL GHAFFAR MD AMIN

v.

IBRAHIM YUSOFF & ANOR

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FEDERAL COURT, PUTRAJAYA
ABDUL HAMID MOHAMAD CJ
ZAKI TUN AZMI PCA
ARIFIN ZAKARIA FCJ
[CIVIL APPLICATION NO: 08-149-2007(P)]

C

12 MAY 2008

CIVIL PROCEDURE: *Appeal - Appeal to Federal Court - Dependency claim arising from motor vehicle accident - Whether appeal from Court of Appeal to Federal Court regarding matter that commenced in Sessions Court permitted - Rules of the Federal Court 1995, r. 137*

D

CIVIL PROCEDURE: *Jurisdiction - Federal Court - Dependency claim arising from motor vehicle accident - Whether appeal from Court of Appeal to Federal Court regarding matter that commenced in Sessions Court permitted - Rules of the Federal Court 1995, r. 137*

E

CONSTITUTIONAL LAW: *Courts - Jurisdiction of Federal Court - Dependency claim arising from motor vehicle accident - Whether appeal from Court of Appeal to Federal Court regarding matter that commenced in Sessions Court permitted - Rules of the Federal Court 1995, r. 137*

F

DAMAGES: *Fatal accident - Dependency claim - Appeal from Court of Appeal to Federal Court regarding matter that commenced in Sessions Court - Whether permitted - Rules of the Federal Court 1995, r. 137*

G

CIVIL LAW ACT: *Dependency claim - Claim for damages - Appeal from Court of Appeal to Federal Court regarding matter that commenced in Sessions Court - Whether permitted - Rules of the Federal Court 1995, r. 137*

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The respondents had filed an action at the Sessions Court claiming for general and special damages, interest and costs. The claim was a dependency claim arising from an accident in which the deceased, a pillion rider on a motorcycle, had died. The Sessions Court decided in favour of the respondents, but the respondents, being dissatisfied with the multiplier and multiplicand awarded, appealed to the High Court. Upon dismissal of the appeal by the High Court, the respondents appealed to the Court of Appeal, which allowed the appeal in part. It did not allow the increase in

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the multiplicand but allowed the appeal in respect of the multiplier by increasing the multiplier to 16 years. The applicant now applied to this court under r. 137 of the Rules of the Federal Court 1995 ('RFC') for leave to appeal on various issues. The only issue requiring determination was whether r. 137 of the RFC permitted an appeal from the Court of Appeal to this court in a matter that commenced in the Sessions Court.

Held (dismissing the application)
Per Abdul Hamid Mohamad CJ, Zaki Tun Azmi PCA & Arifin Zakaria FCJ:

(1) Rule 137 of the RFC cannot be construed as to confer any new jurisdiction to the existing jurisdiction of the Federal Court as spelt out under the Federal Constitution, the Courts of Judicature Act 1964 and other statutes. If the law provides for an appeal, then there is. It is not within the jurisdiction of the court to create appeals when the statute does not provide or, as in this case, clearly does not permit. Since there is no further appeal to this court, then the Court of Appeal becomes the apex court as far as actions and suits in respect of motor vehicle accidents are concerned. That is the intention of the legislature and it is incumbent upon this court to give effect to it. When the law states that the decision of the Court of Appeal is final, then the appeal process should stop at the Court of Appeal; it cannot be allowed to come to this court by way of a review process under r. 137 of the RFC. *R Rama Chandran v. The Industrial Court of Malaysia & Anor* (refd); *Tan Sri Eric Chia Eng Hock v. PP* (refd); *Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors* (refd). (paras 15, 20, 22 & 28)

Bahasa Malaysia *Translation Of Headnotes*

Responden-responden telah memfail tindakan di Mahkamah Sesyen menuntut gantirugi am dan khas, faedah dan kos. Tuntutan adalah satu tuntutan tanggungan dan berbangkit dari satu kemalangan jalanraya di mana simati, pembonceng motosikal, telah meninggal dunia. Mahkamah Sesyen memutuskan untuk manfaat responden-rssponden, namun responden-responden, yang tidak berpuashati dengan pendarab dan multiplicand yang digunakan, telah merayu ke Mahkamah Tinggi. Apabila rayuan ditolak oleh Mahkamah Tinggi, responden-responden telah merayu ke Mahkamah Rayuan yang membenarkan sebahagian dari rayuan. Mahkamah Rayuan

A tidak membenarkan penambahan multiplicand, tetapi membenarkan rayuan berhubung pendarab dengan menaikkannya kepada 16 tahun. Pemohon kini memohon kepada mahkamah ini di bawah k. 137 Kaedah-Kaedah Mahkamah Persekutuan 1995 ('KMP') untuk kebenaran merayu atas beberapa isu. Isu tunggal yang B memerlukan keputusan adalah sama ada k. 137 KMP membenarkan rayuan dari Mahkamah Rayuan ke mahkamah ini dalam satu perkara yang bermula di Mahkamah Sesyen.

Diputuskan (menolak permohonan)

C **Oleh Abdul Hamid Mohamad KH, Zaki Tun Azmi PMR & Arifin Zakaria HMP:**

(1) Kaedah 137 KMP tidak boleh ditafsirkan sebagai memberi bidangkuasa baru kepada bidangkuasa sedia ada Mahkamah Persekutuan seperti yang tercatit di dalam Perlembagaan D Persekutuan, Akta Mahkamah Keadilan 1964 dan statut-statut lain. Jika undang-undang membuat peruntukan mengenai rayuan, maka rayuan boleh dikemukakan. Bukanlah termasuk dalam bidangkuasa mahkamah ini untuk mencipta rayuan-rayuan yang tidak diperuntukkan oleh statut, atau, sepertimana E yang berlaku di sini, yang tidak dibenarkan oleh statut. Oleh kerana tiada lagi rayuan lanjut ke mahkamah ini, maka Mahkamah Rayuan menjadi mahkamah tertinggi berhubung dengan tindakan-tindakan dan guaman-guaman yang menyangkuti kemalangan kenderaan. Inilah niat badan F perundangan dan menjadi tanggungjawab mahkamah ini untuk memberi kesan kepadanya. Bilamana undang-undang menyatakan bahawa keputusan Mahkamah Rayuan adalah muktamad, maka proses rayuan harus berhenti di Mahkamah Rayuan; ia tidak boleh dibenar datang ke mahkamah ini melalui G proses kajian semula di bawah k. 137 KMP. *R Rama Chandran v. The Industrial Court of Malaysia & Anor* (dirujuk); *Tan Sri Eric Chia Eng Hock v. PP* (dirujuk); *Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors* (dirujuk).

H **Case(s) referred to:**

Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors [1995] 3 CLJ 485 FC ***(refd)***

Chan Chin Min & Anor v. Lim Yoke Eng [1994] 3 CLJ 687 SC ***(refd)***

Cheng Bee Teik & Ors v. Peter Selvaraj & Anor [2005] 2 CLJ 839 CA ***(refd)***

I *Dato' Mohamed Hashim Shamsuddin v. The Attorney General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 SC* ***(refd)***

Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor And Another Appeal [2004] 1 CLJ 797 CA ***(refd)***
Lee Lee Cheng v. Seow Peng Kwang [1960] 26 MLJ 1 ***(refd)***
Noraini Omar & Anor v. Rohani Said & Another Appeal [2006] 1 CLJ 895 CA ***(refd)***
R Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim (Permohonan Sivil No: 08-151-2007 (N)) (Unreported) ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***
Yong Teck Lee v. Harris Mohd Salleh & Anor [2002] 3 CLJ 422 CA ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 7(3)(iv)(a), (d)
Courts of Judicature Act 1964, ss. 16(1), 17, 67(1), 96(a)
Criminal Procedure Code, s. 374
Rules of the Federal Court 1995, r. 137
Rules of the High Court 1980, O. 18 r. 19(1)(d), O. 92 r. 4

Code of Civil Procedure [Ind], s. 151

For the applicant - Jagjit Singh (Santhana Dass with him); M/s Dass, Jainab & Assoc
For the respondents - Brijnandan Singh Bhar (Shailender Bhar & Natashar Bhar with him); M/s Brijnandan Singh Bhar & Co

Reported by Suresh Nathan

JUDGMENT

Abdul Hamid Mohamad CJ:

[1] We heard this application on 28 January 2008 and dismissed it. These are my grounds.

[2] The respondents who were the plaintiffs in the Sessions Court filed an action at the Sessions Court, Georgetown, Penang claiming for general and special damages, interest and costs. The claim was a dependency claim arising from an accident in which the deceased, a pillion rider on a motorcycle had died. The Sessions Court decided in favour of the respondents as follows:

a. Liability – Defendant wholly negligent

b. Dependency – For seven years ie,

A Pretrial 44 months x RM220

= RM8,800

Post-trial 40 months x RM200

B = RM8,000

c. Funeral expenses – RM2,000

[3] The respondents, being dissatisfied with the multiplier and the multiplicand awarded, appealed to the High Court. The High C Court dismissed the appeal and upheld the decision of the Sessions Court.

[4] The respondents further appealed to the Court of Appeal. The Court of Appeal allowed the appeal in part. It did not allow D the increase in the multiplicand but allowed the appeal in respect of the multiplier by increasing the multiplier to 16 years.

[5] The applicant (who was the defendant in the Sessions Court) now applies to this court for leave to appeal on the E following issues:

(a) Whether the Court of Appeal is the apex court in respect of cases arising from motor vehicle accidents and has co-ordinate jurisdiction as the Federal Court;

F (b) Whether the Court of Appeal was right in its conclusion in *Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor & Another Appeal* [2004] 1 CLJ 797 that *Chan Chin Min & Anor v. Lim Yoke Eng* [1994] 3 CLJ 687 was wrongly decided by the majority in the then Supreme Court and refusing to follow the G case in defiance of the doctrine of the *stare decisis*;

(c) Whether this Honourable Court affirms and upholds that the doctrine of *stare decisis* is applicable to all the courts in Malaysia and has to be strictly followed;

H (d) Whether the Court of Appeal must accept loyally the decisions of the Federal Court;

(e) Whether the decision in *Chan Chin Min & Anor v. Lim Yoke Eng* was given *per incuriam*;

I (f) For purposes of calculation of dependency claims, is there a difference between 'loss of support' and 'loss of earnings';

(g) In interpreting s. 7(3) of the Civil Law Act 1956 do the concepts 'loss of support' and 'loss of earnings' bear the same meaning and are merged for purposes of the calculation of dependency claims especially in view of the words 'in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section …' in s. 7(3)(iv) of the Civil Law Act;

(h) Whether the words 'take into account' in s. 7(3)(iv)-(a)-(d) of the Civil Law Act 1956 and in particular (d) make it mandatory for the court to be bound by the fixed multiplier prescribed therein or alternatively whether the court has a discretion to depart from the fixed multiplier on a case to case basis depending on the circumstances and the evidence adduced at the trial;

(i) If *Ibrahim Ismail*'s case is rightly decided, it will follow that for dependency cases arising from motor vehicle accidents, the fixed multiplier as prescribed under s. 7(3(iv)(d) must be strictly followed in all situations. For dependency cases arising from accidents other than motor vehicle accidents (if it originates from the High Court), *Chan Chin Min*'s case will apply ie, the statutory multiplier need not be strictly followed in cases involving a deceased person who is not married and the dependants are his/her parents. Whether this Honorable Court will affirm that there be two different sets of multiplier applicable to dependants in respect of motor vehicle accidents and non motor vehicle accidents?

[6] As stated in the affidavit filed on behalf of the applicant, the application is made under rr. 137 of the Rules of the Federal Court 1995 (RFC 1995). What it means is that learned counsel for the defendant conceded that there was no appeal pursuant to s. 96 of the Courts of Judicature Act 1964 ("CJA 1964"). That, of course is the correct position of the law: the suit having commenced in the Session Court, there is no further appeal to the Federal Court. I need say no more on it. So, the only question for this court to answer is whether r. 137 of the RFC 1995 permits an appeal from the Sessions Court to this Court in a matter that had commenced in the Sessions Court.

[7] Rule 137 of the RFC 1995 provides:

A 137. For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

B **[8]** RFC 1995 was made by the Rules Committee in exercise of the powers conferred by s. 17 of the CJA 1964. Section 16 read with s. 17 in brief, provides that the Rules Committee may make rules:

C (a) for regulating and prescribing **the procedure** (including the method of pleading) **and the practice** to be followed in the High Court, the Court of Appeal and the Federal Court in all causes and matters whatsoever in or with respect to which those Courts **have for the time being jurisdiction** … and
D any matters **incidental** or relating to any such procedure or practice …

(b) For regulating and prescribing **the procedure** on civil or criminal appeals …

E (c) For regulating the enforcement and execution …

and so on.

[9] Note the underlined words. The rules that the Rules
F Committee are empowered to make are rules relating to procedure and practice and they are in respect of matters in which the courts "have for the time being jurisdiction". The Committee is not empowered to make rules to grant jurisdiction to the courts to hear and determine appeals not permitted by statute. Similarly,
G other paragraphs of s. 16 also do not give such powers to the Rules Committee to make. They too concern "procedure" not substantive law. Any rule, being a subsidiary legislation, that purports to give a right of appeal not permitted by the Constitution and the CJA 1964 would be *ultra vires* both the
H Constitution and the CJA 1964.

[10] In this respect, Thomson CJ, almost half a century ago, had said in *Lee Lee Cheng (f) v. Seow Peng Kwang* [1960] 26 MLJ 1 (CA):

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> It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

[11] In other words, the powers may be exercised if the court has the jurisdiction to exercise it in the first place.

[12] In *Dato' Mohamed Hashim Shamsuddin v. The Attorney General, Hong Kong* [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 (SC) Abdoolcader SCJ referred to s. 16(1) of the CJA 1964 as a section that provides "for the regulation and prescription of **curial procedure**", (emphasis added) a very apt description indeed, and went on to say:

> This legislative provision clearly relates to a matter of practice and procedure with no question arising of creating or altering substantive rights or of any rules made pursuant thereto purporting *per se* to confer jurisdiction where none existed otherwise, and it is this specific enactment in the 1964 Act that enables the necessary rules to be spelt out to regulate the procedure for the purposes specified therein.

[13] A similar stand was also taken by Seah SCJ in His dissenting judgment in the same case:

> In my opinion, it is plain that section 16 of the Act deals with the practice and procedure of the High Court and the Supreme Court subject to the provisos contained in (a) and (b) of subsection (3) of section 17 of the Act. Section 16 does not deal with the general jurisdiction of the High Court. As such in my opinion, the power given to the Rules Committee is limited only to making rules regulating and prescribing the practice and procedure to be followed in the Courts.

[14] This court in the case of *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 at p 212, discussed with more details on the scope of the powers conferred by the Rules Committee, *albeit*, with reference to the Rules of the High Court as follows:

A The next topic to be logically considered in this context, is the status of the Rules of the High Court 1980.

By s. 17(1) of the Courts of Judicature Act 1964, powers are conferred upon the Rules Committee to make 'rules of court' for the purpose of regulating and prescribing the practice and
B procedure to be followed in the respective courts for which each of them is constituted but within the strict limits defined by s. 16.

The most decisive limitation placed on the powers of the Rules Committee, and indeed on the other rule-making authorities, is
C that they extend to regulating the practice and procedure of the High Court and other courts for which the Rules are made. Although these powers are wide, yet it cannot be gainsaid, that they do not extend into the area of substantive law. Clearly, there is a vital distinction made between, on the one hand, substantive law, the function of which is to define, create, confer of impose
D legal rights and duties, and on the other hand, procedural law, the function of which is to provide the machinery, the manner or means, by recourse to which legal rights and duties may be enforced or recognized by courts of law or any tribunal **seized with jurisdiction to adjudicate on a dispute before it.** (emphasis added).
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[15] In other words, r. 137 cannot be construed as to confer any new jurisdiction to the existing jurisdiction of the Federal Court as spelt out under the Federal Constitution, the Courts of Judicature Act and other statutes.
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[16] There is, in fact, a similar rule in O. 92 r. 4 of the Rules of the High Court 1980 (RHC 1980). The only difference is that O. 92 r. 4 of the RHC 1980 applies only to civil proceedings since it is found in the RHC 1980, a civil procedure. On the
G other hand, r. 137 which is placed under Chapter Six (Miscellaneous) and not under Chapter Three (Civil Appeals) of the RFC 1995. On the face of it, the rules applies to both civil and criminal proceedings. That is the way the court has been treating it, simply because it appears under "Miscellaneous".
H However, looking at the wording of the rule, especially "to prevent an abuse of the process of the court" it should more appropriately refer to civil proceedings. It is in civil proceedings that such phrase is to be found, eg, in O. 18 r. 19(1)(d) of the RHC 1980. In my view, the rule should more properly be placed under Chapter
I Three (Civil Appeals). In any event, whether the rule applies to

criminal proceedings or not, makes no difference in this case, which is a civil case. In all these years, I have not heard any argument or even opinion by anyone that O. 92 r. 4 of the RHC 1980, grants appellate jurisdiction to the High Court not otherwise provided by statute. In fact such an argument would be clearly untenable. Similarly, I do not see how the similarly worded r. 137 can be read as to give such appellate jurisdiction to the Federal court.

[17] Even the judgment of Augustine Paul FCJ in *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 (a criminal case), in considering s. 16 of the CJA 1964 and r. 137 of the RFC 1995, says it very clearly:

> Thus any rule made under s. 16(a) must be procedural in nature and must be in respect of matters over which the courts have jurisdiction. With regard to condition (a) of s. 16(a) reference may be made to *Sarwan Ram v. Amar Nath* AIR [1980] Punj & Haryana 162 where it was held that s. 151 of the Indian Code of Civil Procedure ("s. 151"), which is similar to r. 137, confers only a procedural jurisdiction. In his article entitled *The inherent jurisdiction of the Court: Current Legal Problems* [1970] Vol. 23 Sir Jack Jacob says at p 124:
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> > The inherent jurisdiction of the Court is exercisable as part of the process of the administration of justice. It is part of procedural law, both civil and criminal, and not of substantive law; it is invoked in relation to the process of litigation.
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> Condition (a) of s. 16(a) has therefore been satisfied as r. 137 is procedural in nature. Condition (b) of s. 16(a) requires a consideration of whether the inherent power is a matter over which the courts have jurisdiction. The inherent power under r. 137 is necessary element of the jurisdiction of the Court. As Lord Morris said in *Connelly v. DPP* [1964] 2 All ER 401 at p. 409:
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> > There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

> Thus r. 137 does not give any new powers; it only provides that those **which the court already inherently possesses shall be preserved** and is inserted lest it should be considered that the only powers possessed by the court are those expressly conferred by law (see *Emperor v. Nazir Ahmad* AIR [1945] PC 18). This view has been recognized by this Court in *Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 and *Chan Yock Cher v. Chan Teong Peng* [2005] 4 CLJ 29. (emphasis added).

[18] As pointed out by my brother Arifin Zakaria, FCJ in the course of the arguments, with which I entirely agree, we have to be careful when referring to cases on s. 151 of Indian Code of Civil Procedure because, in India, the Code of Civil Procedure is an Act of Parliament whereas r. 137 is only a rule made by the Rules Committee pursuant to the limited purpose provided by s. 16 of the CJA 1964. In spite of that the Indian Courts hold that s. 151 of the Indian Code of Civil Procedure only confers procedural jurisdiction.

[19] It was argued that if there was no further appeal to this court then the issues of law stated in the notice of motion would never reach this apex courts and the Court of Appeal would be free to disregard the earlier judgments of this Court.

[20] My answer to this argument is that, first, appeal is a creature of statute. In *Auto Dunia Sdn. Bhd. v. Wong Sai Fatt & Ors.* [1995] 3 CLJ 485, this court has said it very clearly:

> It is an elementary proposition that this court is a creature of Statute and that equally a right of appeal is also a creature of Statute, so that unless an aggrieved party can bring himself within the terms of a statutory provision enabling him to appeal, no appeal lies.

If the law provides for an appeal, then there is. It is not within the jurisdiction of the court to create appeals when the statute does not provide or, in this case, clearly does not permit.

[21] Secondly, even if the argument is factually true, I do not see anything abnormal about it. Until 16 January 2003, there was no appeal at all in election petition cases – see *Yong Teck Lee v. Harris Mohd. Salleh & Anor* [2002] 3 CLJ 422 CA and Act A 1177. There used to be appeals from the Federal Court to the Judicial Committee of the Privy Council. Now no more, because the law does not allow such appeals anymore. Even now, in *habeas*

corpus cases, appeals go straight from the High Court to the Federal Court, again because the law says so – see s. 374 of the Criminal Procedure Code.

[22] Since there is no further appeal to this court, then the Court of Appeal becomes the apex court as far as actions and suits in respect of motor vehicle accidents are concerned.

[23] It was also argued that if leave to appeal was not allowed, then there would be uncertainty in the law and the lower courts would be left in doubt as to which authorities to follow. With respect, again I do not think that that it is an issue. The situation is the same as when appeals to the Privy Council were abolished. Courts should follow the judgments of the Federal Court. Here, they follow the Court of Appeal.

[24] It was further argued, what if one panel of the Court of Appeal disagrees with another and refuses to follow the earlier judgment of that Court? That again is nothing strange: it happens in the Federal Court too.

[25] In the circumstances, the application is dismissed with costs. Deposit to the plaintiffs (respondents in this application) on account of taxed costs.

Zaki Tun Azmi PCA:

[26] I have had the privilege of reading the grounds of judgment of my learned Chief Justice and my learned brother Arifin Zakaria FCJ and I concur with their decisions.

[27] In *Sia Cheng Soon & Anor v. Tengku Ismail bin Tengku Ibrahim* (Permohonan Sivil No: 08-151-2007 (N)), I have reasoned out why an appeal of a case originating from a subordinate court should end in the Court of Appeal. The same reasonings apply to this case.

Arifin Zakaria FCJ:

[28] As I have stated in *Cheng Bee Teik & Ors v. Peter a/l Selvaraj & Anor* [2005] 2 CLJ 839 and *Noraini bt Omar (seorang isteri kepada simati, Ku Mansor bin Baharom, dan ibu kepada simati, Ku Amirul bin Ku Mansor) & Anor v. Rohani bin Said (and Another Appeal)* [2006] 1 CLJ 895 that, as far as fatal accident and

A personal injury claims arising from motor vehicles accidents are concerned, the Court of Appeal stands as the apex court, as such no further appeal shall lie to this court. (See s. 67(1) and s. 96(a) of the Courts of Judicature Act 1964.) That is the intention of the legislature and it is incumbent upon this court to give effect
B to it. When the law states that the decision of the Court of Appeal is final then the appeal process should stop at the Court of Appeal; it cannot be allowed to come to this court by way of a review process under r. 137 of the Rules of the Federal Court 1995. I, therefore, agree with the learned CJ that this application
C should be dismissed with costs.

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